

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MIKE R. SERNA,

Plaintiff,

v.

No. 1:23-cv-00083-SCY

DAVID WEBSTER and
MARGETTE WEBSTER,

Defendants.

MEMORANDUM OPINION AND ORDER TO SHOW CAUSE

Plaintiff, who is proceeding *pro se*, alleges that Defendants “filed a Claim, in state Court, to Foreclose on [Defendants’] transcript of Judgment” and “evicted” Plaintiff and his family from the Serna residence. Doc. 1 at 3-4. Plaintiff also alleges that, “The Property of the ‘Mike R. Serna Irrevocable Living Trust’ was wrongly taken, in a Foreclosure against Emma [Serna, Plaintiff’s wife], the Trustee, and Mike Serna, the Settler, without a lawsuit or judgment against it, and was deprived of its property and due process of law.” *Id.* at 2, 7. Plaintiff asserts due process claims pursuant to the Fourth and Fourteenth Amendments, a claim for emotional distress arising from the foreclosure on the property and a claim for defamation because Defendant Margette Webster “tells everyone that she owns the property.” *Id.* at 2, 6, ¶¶ 1, 3.

The Complaint fails to state due process claims pursuant to the Fourth and Fourteenth Amendments of the United States Constitution. “The Fourth Amendment protects against the government’s 1) unprivileged trespass on property expressly protected by the Fourth Amendment—‘persons, houses, papers, and effects’—for the purpose of conducting a search or seizure; and 2) infringement of an individual’s reasonable expectation of privacy.” *United States v. Carloss*, 818 F.3d 988, 992 n.2 (10th Cir. 2016) (citing *Florida v. Jardines*, 133 S.Ct. 1409,

1414, 1417 (2013)). “The Fourteenth Amendment to the United States Constitution ensures that state officials shall not ‘deprive any person of life, liberty, or property without due process of law.’” *McBeth v. Himes*, 598 F.3d 708, 723 (10th Cir. 2010) (quoting U.S. Const. amend XIV)).

Here, there are no allegations that Defendants are government or state actors. Thus, Plaintiff’s due process claims pursuant to the Fourth and Fourteenth Amendments of the United States Constitution should be dismissed for failure to state a claim upon which relief can be granted. The Court orders Plaintiff to show cause why the Court should not dismiss Plaintiff’s due process claims. If Plaintiff asserts the Court should not dismiss Plaintiff’s due process claims, Plaintiff must, within 21 days of entry of this Order, file an amended complaint.

Case Management

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant’s responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (the “Local Rules”).

Guide for Pro Se Litigants at 4, United States District Court, District of New Mexico (October 2022). The Local Rules, the Guide for Pro Se Litigants and a link to the Federal Rules of Civil Procedure are available on the Court’s website: <http://www.nmd.uscourts.gov>.

Compliance with Rule 11

The Court reminds Plaintiff of his obligations pursuant to Rule 11 of the Federal Rules of Civil Procedure. *See Yang v. Archuleta*, 525 F.3d 925, 927 n. 1 (10th Cir. 2008) (“*Pro se* status does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules of Civil and Appellate Procedure.”). Rule 11(b) provides:

Representations to the Court. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's

knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b). Failure to comply with the requirements of Rule 11 may subject Plaintiff to sanctions, including monetary penalties and nonmonetary directives. *See* Fed. R. Civ. P. 11(c).

IT IS ORDERED that Plaintiff shall, within 21 days of entry of this Order, show cause why the Court should not dismiss Plaintiff's due process claims. If Plaintiff asserts the Court should not dismiss Plaintiff's due process claims, Plaintiff must, within 21 days of entry of this Order, file an amended complaint. Failure to timely show cause and file an amended complaint may result in dismissal of Plaintiff's due process claims.


UNITED STATES MAGISTRATE JUDGE